IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
CHAKA FATTAH, SR.	:	NO. 15-346-1
ROBERT BRAND	:	NO. 15-346-3

MEMORANDUM

Bartle, J. March 4, 2016

Before the court are the motions of defendants Congressman Chaka Fattah, Sr. ("Fattah, Sr.") and Robert Brand ("Brand") (Docs. ## 124 & 127, respectively) for an order directing the government: (1) to show cause why FBI Special Agent Richard Haag ("Agent Haag") should not be held in contempt for revealing matters before the grand jury in violation of Rule 6(e) of the Federal Rules of Criminal Procedure and (2) to produce all communications that took place between prosecutors and members of each Grand Jury convened in connection with this matter.[1]

I.

Defendants Fattah, Sr., Brand, Herbert Vederman, Karen Nicholas, and Bonnie Bowser are named in various counts in a 29-count, 85-page indictment handed down on July 29, 2015. All

1. Brand's motion is captioned as a "motion to join defendant Chaka Fattah Sr.'s motion for a show cause hearing pursuant to Rule 6(e) and disclosure of Grand Jury communications."

five defendants are charged with conspiracy to commit racketeering in violation of 18 U.S.C. § 1962(d). In addition, the indictment charges one or more defendants with: conspiracy to commit wire fraud (18 U.S.C. §§ 1343 and 1349); conspiracy to commit honest services wire fraud (18 U.S.C. §§ 1343, 1346, and 1349); conspiracy to commit mail fraud (18 U.S.C. § 1341); mail fraud (18 U.S.C. § 1341); falsification of records (18 U.S.C. §§ 1519 and 2); conspiracy to commit bribery (18 U.S.C. § 371); bribery (18 U.S.C. § 201(b)(1)); bank fraud (18 U.S.C. §§ 1344 and 2); false statements to financial institutions (18 U.S.C. §§ 1014 and 2); money laundering (18 U.S.C. §§ 1957 and 2); money laundering conspiracy (18 U.S.C. § 1956(b)); and wire fraud (18 U.S.C. § 1343).

Defendants rely, in support of their motion, on events that occurred not in connection with the pending indictment but in connection with a separate indictment of Chaka Fattah, Jr. ("Fattah, Jr.") the son of Chaka Fattah, Sr. The indictment of Fattah Jr. was issued approximately one year before the indictment was filed in this matter. Among other things, Fattah, Jr. was charged with defrauding the Philadelphia School District. Agent Haag, who played a significant role in the government's investigation of this matter, was also involved in the investigation of Fattah, Jr.

During Fattah, Jr.'s trial, which took place in October and November of 2015, Agent Haag admitted to having tipped off a Philadelphia Inquirer reporter named Martha Woodall ("Woodall") about the February 2012 execution of search warrants at Fattah, Jr.'s home. On direct examination by the government, Agent Haag explained that he had sought background information about the Philadelphia School District from Woodall, who reported frequently on topics concerning education. He had decided to do so after learning that Fattah, Jr. had told his friend Matthew Amato ("Amato") that Fattah, Sr. "could make some phone calls for him" in connection with Fattah, Jr.'s dealings with the Philadelphia School District. Agent Haag testified that Fattah, Sr. "had been in politics for . . . 28 years and he knows people, and so I was interested in who those people would be, and what kind of influence he could have over the Philadelphia School District."

According to his testimony, Agent Haag had provided Woodall with information concerning the focus of the government's investigation in exchange for background information about the Philadelphia School District. He had informed Woodall that he had obtained audio tapes, surreptitiously recorded by Amato, of conversations between Amato and Fattah, Jr. He had also informed Woodall that a sealed search warrant was to be executed at Fattah, Jr.'s

condominium and provided her with the exact date and time of the planned search. These conversations led to the presence of the press, including photographers, during the execution of the search warrant on the morning of February 29, 2012. Haag also testified that he did not reveal any information that he had obtained as a result of any grand jury subpoena.

Upon learning of Agent Haag's communications with Woodall, Fattah, Jr. filed a motion requesting a hearing in order to determine whether Agent Haag's actions gave rise to a violation of Rule 6(e) or of Brady v. Maryland, 373 U.S. 83 (1963). The court heard oral argument on Fattah, Jr.'s motion and also gave Fattah, Jr. the opportunity to cross-examine Agent Haag about his disclosure. We thereafter denied Fattah, Jr.'s motion. We found that he had "not established a prima facie case that Agent Haag disclosed secret grand jury information in violation of Rule 6(e)(2)." No. 14-409, Doc. # 228, at 5 (Nov. 2, 2015). Specifically, we reasoned that Agent Haag had provided credible testimony that he had not "disclose[d] any matter occurring before the grand jury." We noted that "at the time of Agent Haag's interactions with Woodall . . . a grand jury had simply issued subpoenas without taking any testimony. A different grand jury . . . handed down the indictment . . . [and] a different grand jury issued the superseding indictment."

Id. at 5-6. This rendered Agent Haag's conversations with Woodall "collateral to the charges" faced by Fattah, Jr.

We also rejected Fattah, Jr.'s request that the indictment be dismissed. He had failed to show that there had been any fundamental error or that he had been "prejudiced by an irregularity in the grand jury proceedings." Id. at 5, 8. Finally, we determined that Fattah, Jr. was not entitled to a hearing to determine whether any Brady violation had occurred. Id. at 10. The jury ultimately convicted Fattah, Jr. of 22 of the 23 counts against him.

II.

We first address the movants' request for an order directing the government to show cause why Agent Haag should not be held in contempt for breaching the grand jury secrecy rules set forth in Rule 6(e) of the Federal Rules of Criminal Procedure. Rule 6(e) establishes the secrecy rules governing grand juries, which operate in secret to conduct investigations and decide whether to issue indictments. Pursuant to Rule 6(e)(2), a government agent such as Agent Haag "must not disclose a matter occurring before the grand jury" without the court's authorization pursuant to the circumstances listed in the Rule. See Fed. R. Crim. P. 6(e). The Rule further provides that if an agent such as Agent Haag commits a "knowing

violation" of the secrecy rules, said violation "may be punished as a contempt of court." See Fed. R. Crim. P. 6(e)(7).

In order to determine whether a "show cause" hearing based on a purported Rule 6(e) violation is warranted, we must first determine whether the movants have established a prima facie case of such a violation. In re Sealed Case No. 98-3077, 151 F.3d 1059, 1067 (D.C. Cir. 1998) (citing Barry v. United States, 865 F.2d 1317, 1321 (D.C. Cir. 1989)); see also In re Newark Morning Ledger Co., 260 F.3d 217, 227 (3d Cir. 2001). To do so, a movant must establish that among other things "a matter occurring before the grand jury" has been disclosed. In re Sealed Case No. 99-3091 ("OIC Contempt Proceeding"), 192 F.3d 995, 1001 (D.C. Cir. 1999); Finn v. Schiller, 72 F.3d 1182, 1189 (4th Cir. 1996); see also United States v. Fattah, No. 14-409, 2015 WL 289983, at *9 (E.D. Pa. Jan. 22, 2015).

Although Rule 6(e) protects "only the essence of what takes place in the grand jury room," the term "matter before a grand jury" extends "not only to information drawn from transcripts of grand jury proceedings, but also to anything which may reveal what occurred before the grand jury." In re Grand Jury Matter ("Catania"), 682 F.2d 61, 63 (3d Cir. 1982). Accordingly, information "coincidentally before the grand jury" the disclosure of which "would not elucidate the inner workings of the grand jury" may be disclosed. OIC Contempt Proceeding at

1002. In determining whether a "matter occurring before the grand jury" has been revealed, we must take care to differentiate between statements made by the government "with respect to its own investigation," and those made "with respect to a *grand jury*'s investigation." See id. (emphasis in original). The disclosure of information which "exists apart from and was developed independently of grand jury processes" does not amount to a disclosure of "matters occurring before the grand jury." Catania, 682 F.2d at 64. Put differently, not all statements made by members of the prosecutorial team about their investigations implicate Rule 6(e).

As noted above, we concluded in Fattah, Jr.'s case that Agent Haag had not disclosed "matters occurring before the grand jury." Now Fattah, Sr. and Brand merely direct our attention to the same facts established at the trial of Fattah, Jr. They add no new information.[2] We therefore reiterate our determination that no prima facie showing of a Rule 6(e) violation has been established. The information revealed by Agent Haag sheds no light on the "inner workings of the grand jury." OIC Contempt Proceeding at 1002. Again, Agent Haag

2. In his reply brief, Fattah, Sr. appears to argue that he should not be bound by this court's earlier ruling on the Rule 6(e) motion of Fattah, Jr. This argument fails, however, as Fattah, Sr. has not added any new facts to those we already considered when reviewing his son's motion, nor has he explained why his circumstances are any more compelling than those of his son.

admitted to having told Woodall that Fattah, Jr. was being investigated and that a search was to take place, without revealing anything about the Grand Jury or any information obtained as a result of any Grand Jury subpoena. In sum, Agent Haag merely disclosed information "with respect to [his] own investigation," which was not a "matter occurring before the grand jury." Id. This is not a violation of Rule 6(e).

Significantly, the movants have failed to explain why disclosures which we characterize as "collateral" to the prosecution of Fattah, Jr. are any less collateral to this separate criminal action. They have not shown that Agent Haag has done anything improper in this case. In his reply brief, Fattah, Sr. cites for the first time to Gluck v. United States, in which the Third Circuit remarked that courts have "the discretion . . . to afford any and all persons potentially affected by the disclosure of grand jury materials a reasonable opportunity to appear and be heard." 771 F.2d 750, 755 n.4 (3d Cir. 1985) (citing Fed. R. Crim. P. 6(e)(3)(D)). As noted above, however, there has been no "disclosure of grand jury materials." See id. There is absolutely no indication that Agent Haag disclosed "matters occurring before the grand jury" in this matter,[3] and no basis to conclude that Fattah, Sr. and

3. Indeed, if Agent Haag had revealed to the media additional information other than what was discussed during Fattah, Jr.'s

Brand are entitled to a hearing based on the purported disclosure of "matters occurring before the grand jury" in a separate matter.

III.

We now turn to the movants' contention that the government should be required to produce to them "all communications occurring between prosecutors and grand jurors in each grand jury convened in connection with this criminal matter." They claim that they need these materials "in order to determine if additional leaks of grand jury information have been made in this matter."

It is well-established that proceedings before a Grand Jury are to be conducted in secret. United States v. Smith, 123 F.3d 140, 148 (3d Cir. 1997); see also Fed. R. Crim. P. 6(e)(2)(B). A defendant seeking to pierce the veil of Grand Jury secrecy "bears [a] heavy burden." United States v. Bunty, 617 F. Supp. 2d 359, 372 (E.D. Pa. 2008). To demonstrate that disclosure of Grand Jury transcripts is warranted, a defendant must establish that "particularized and factually based grounds exist to support the proposition that irregularities in the grand jury proceedings may create a basis for dismissal of the indictment." Id.; see also Fed. R. Crim. P. 6(e)(3)(E)(ii).

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trial, he would be obligated to disclose this fact to the defense in this matter.

Dismissal, in turn, is warranted only where such irregularities were prejudicial to the defendant. Bank of Nova Scotia v. United States, 487 U.S. 250, 254 (1988).

We reiterate our conclusion that the record before us reveals no disclosure of "matters occurring before the grand jury." There is therefore no merit to the movants' assertion that they should be permitted to examine the grand jury materials for evidence of "additional leaks of grand jury information." The movants point to no "particularized and factually based grounds . . . to support the proposition" that there were irregularities in the proceedings before the Grand Jury, nor are we aware of any. See Bunty, 617 F. Supp. 2d at 372. We will therefore deny the request of Fattah, Sr. and Brand for an order compelling disclosure of communications between prosecutors and grand jurors in this matter.

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ORDER

AND NOW, this 4th day of March, 2016, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motions of defendants Chaka Fattah, Sr. and Robert Brand "for a Show Cause Hearing Pursuant to Rule 6(e) and Disclosure of Grand Jury Communications" (Docs. ## 124 & 127) are DENIED.

BY THE COURT:

/s/ Harvey Bartle III
J.